

§ 330.10

12 CFR Ch. III (1–1–07 Edition)

(c) *Qualifying joint accounts.* (1) A joint deposit account shall be deemed to be a qualifying joint account, for purposes of this section, only if:

(i) All co-owners of the funds in the account are “natural persons” (as defined in § 330.1(k)); and

(ii) Each co-owner has personally signed a deposit account signature card; and

(iii) Each co-owner possesses withdrawal rights on the same basis.

(2) The signature-card requirement of paragraph (c)(1)(ii) of this section shall not apply to certificates of deposit, to any deposit obligation evidenced by a negotiable instrument, or to any account maintained by an agent, nominee, guardian, custodian or conservator on behalf of two or more persons.

(3) All deposit accounts that satisfy the criteria in paragraph (c)(1) of this section, and those accounts that come within the exception provided for in paragraph (c)(2) of this section, shall be deemed to be jointly owned provided that, in accordance with the provisions of § 330.5(a), the FDIC determines that the deposit account records of the insured depository institution are clear and unambiguous as to the ownership of the accounts. If the deposit account records are ambiguous or unclear as to the manner in which the deposit accounts are owned, then the FDIC may, in its sole discretion, consider evidence other than the deposit account records of the insured depository institution for the purpose of establishing the manner in which the funds are owned. The signatures of two or more persons on the deposit account signature card or the names of two or more persons on a certificate of deposit or other deposit instrument shall be conclusive evidence that the account is a joint account (although not necessarily a qualifying joint account) unless the deposit records as a whole are ambiguous and some other evidence indicates, to the satisfaction of the FDIC, that there is a contrary ownership capacity.

(d) *Nonqualifying joint accounts.* A deposit account held in two or more names which is not a qualifying joint account, for purposes of this section, shall be treated as being owned by each named owner, as an individual, corporation, partnership, or unincor-

porated association, as the case may be, and the actual ownership interest of each individual or entity in such account shall be added to any other single ownership accounts of such individual or other accounts of such entity, and shall be insured in accordance with the provisions of this part governing the insurance of such accounts.

(e) *Determination of interests.* The interests of the co-owners of qualifying joint accounts, held as tenants in common, shall be deemed equal, unless otherwise stated in the depository institution’s deposit account records. This section applies regardless of whether the conjunction “and” or “or” is used in the title of a joint deposit account, even when both terms are used, such as in the case of a joint deposit account with three or more co-owners.

[63 FR 25756, May 11, 1998, as amended at 64 FR 15656, Apr. 1, 1999; 64 FR 62102, Nov. 16, 1999; 71 FR 14631, Mar. 23, 2006]

§ 330.10 Revocable trust accounts.

(a) *General rule.* Funds owned by an individual and deposited into an account with respect to which the owner evidences an intention that upon his or her death the funds shall belong to one or more qualifying beneficiaries shall be insured in the amount of up to the SMDIA in the aggregate as to each such named qualifying beneficiary, separately from any other accounts of the owner or the beneficiaries. For purposes of this provision, the term “qualifying beneficiaries” means the owner’s spouse, child/children, grandchild/grandchildren, parent/parents, brother/brothers or sister/sisters. (Example: If A establishes a qualifying account payable upon death to his spouse, sibling and two children, assuming compliance with the rules of this provision, the account would be insured up to \$400,000 separately from any other different types of accounts either A or the beneficiaries may have with the same depository institution.) Accounts covered by this provision are commonly referred to as tentative or “Totten trust” accounts, “payable-on-death” accounts, or revocable trust accounts.

(b) *Required intention.* The required intention in paragraph (a) of this section that upon the owner’s death the

funds shall belong to one or more qualifying beneficiaries must be manifested in the title of the account using commonly accepted terms such as, but not limited to, “in trust for,” “as trustee for,” “payable-on-death to,” or any acronym therefor. In addition, the beneficiaries must be specifically named in the deposit account records of the insured depository institution. The settlor of a revocable trust account shall be presumed to own the funds deposited into the account.

(c) *Interests of nonqualifying beneficiaries.* If a named beneficiary of an account covered by this section is not a qualifying beneficiary, the funds corresponding to that beneficiary shall be treated as individually owned (single ownership) accounts of such owner(s), aggregated with any other single ownership accounts of such owner(s), and insured up to the SMDIA per owner. (Examples: If A establishes an account payable upon death to his or her nephew, the account would be insured as a single ownership account owned by A. Similarly, if B establishes an account payable upon death to her husband, son and nephew, two-thirds of the account balance would be eligible for POD coverage up to \$200,000 corresponding to the two qualifying beneficiaries (i.e., the spouse and child). The amount corresponding to the non-qualifying beneficiary (i.e., the nephew) would be deemed to be owned by B in her single ownership capacity and insured accordingly.)

(d) *Joint revocable trust accounts.* Where an account described in paragraph (a) of this section is established by more than one owner and held for the benefit of others, some or all of whom are within the qualifying degree of kinship, the respective interests of each owner (which shall be deemed equal unless otherwise stated in the insured depository institution's deposit account records) held for the benefit of each qualifying beneficiary shall be separately insured up to the SMDIA. However, where a husband and a wife establish a revocable trust account naming themselves as the sole beneficiaries, such account shall not be insured according to the provisions of this section but shall instead be in-

sured in accordance with the joint account provisions of § 330.9.

(e) *Definition of “children”, “grandchildren”, “parents”, “brothers” and “sisters”.* For the purpose of establishing the qualifying degree of kinship identified in paragraph (a) of this section, the term “children” includes biological, adopted and step-children of the owner. The term “grandchildren” includes biological, adopted and step-children of any of the owner's children. The term “parents” includes biological, adoptive and step-parents of the owner. The term “brothers” includes full brothers, half brothers, brothers through adoption and step-brothers. The term “sisters” includes full sisters, half sisters, sisters through adoption and step-sisters.

(f) *Living trust accounts.* (1) This section also applies to revocable trust accounts held in connection with a formal revocable trust created by an owner/grantor and over which the owner/grantor retains ownership during his or her lifetime. These trusts are usually referred to as living trusts. If a named beneficiary in a living trust is a qualifying beneficiary under this section, then the account held in connection with the living trust is eligible for the per-qualifying-beneficiary coverage described in paragraph (a) of this section. This coverage will apply only if, at the time an insured depository institution fails, a qualifying beneficiary would be entitled to his or her interest in the trust assets upon the grantor's death and that ownership interest would not depend on the death of another trust beneficiary. If there is more than one grantor, then the beneficiary's entitlement to the trust assets must be upon the death of the last grantor. The coverage provided in this paragraph (f) shall be irrespective of any other conditions in the trust that might prevent a beneficiary from acquiring an interest in the deposit account upon the account owner's death.

(Example 1: A is the owner of a living trust account with a deposit balance of \$300,000. The trust provides that, upon A's death, her husband shall receive \$100,000 and each of their two children shall receive \$100,000, but only if the children graduate from college by age twenty-four. Assuming A has no other revocable trust accounts at the same depository institution, the coverage on her living

trust account would be \$300,000. The trust names three qualifying beneficiaries. Coverage would be provided up to \$100,000 per qualifying beneficiary regardless of any contingencies.)

(*Example 2:* B is the owner of a living trust account with a deposit balance of \$200,000. The trust provides that, upon B's death, his wife shall receive \$200,000 but, if the wife predeceases B, each of the two children shall receive \$100,000. Assuming B has no other revocable trust accounts at the same depository institution and his wife is alive at the time of the institution failure, the coverage on his living trust account would be \$100,000. The trust names only one beneficiary (B's spouse) who would become the owner of the trust assets upon B's death. If when the institution fails B's wife has predeceased him, then the account would be insured to \$200,000 because the two children would be entitled to the trust assets upon B's death.)

(2) The rules in paragraph (c) of this section on the interest of non-qualifying beneficiaries apply to living trust accounts. (*Example:* C is the owner of a living trust account with a deposit balance of \$200,000. The trust provides that upon C's death his son shall receive \$100,000 and his nephew shall receive \$100,000. The account would be insured for *at least* \$100,000 because one qualifying beneficiary (C's son) would become the owner of trust interests upon C's death. Because the nephew is a non-qualifying beneficiary entitled to receive an interest in the trust upon C's death, that interest would be considered C's single-ownership funds and insured with any other single-ownership funds C might have at the same institution. Assuming C has no other single-ownership funds at the institution, the full \$200,000 in the living trust account would be insured (\$100,000 in C's revocable trust account ownership capacity and \$100,000 in C's single-ownership account capacity).

(3) For living trusts accounts that provide for a life-estate interest for designated beneficiaries and a remainder interest for other beneficiaries, unless otherwise indicated in the trust, each life-estate holder and each remainder-man will be deemed to have equal interests in the trust assets for deposit insurance purposes. Coverage will then be provided under the rules in this paragraph (f) up to the SMDIA per qualifying beneficiary.

(*Example 1:* D creates a living trust providing for his wife to have a life-estate interest in the trust assets with the remaining assets going to their two children upon the wife's death. The assets in the trust are \$300,000 and a living trust deposit account is opened for that full amount. Unless otherwise indicated in the trust, each beneficiary (all of whom here are qualifying beneficiaries) would be deemed to own an equal share of the \$300,000; hence, the full amount would be insured. This result would be the same even if the wife has the power to invade the principal of the trust, inasmuch as defeating contingencies are not relevant for insurance purposes.)

(*Example 2:* E creates a living trust providing for a life estate interest for her spouse and remainder interests for two nephews. The life estate holder is a qualifying beneficiary (E's spouse) but the remainder-men (E's nephews) are not. Assuming a deposit account balance of \$300,000, the living trust account would be insured for *at least* \$100,000 because there is one qualifying beneficiary (E's spouse). The \$200,000 attributable to E's nephews would be insured as E's single-ownership funds. If E has no other single-ownership funds at the same institution, then \$100,000 would be insured separately as E's single-ownership funds. Thus, the \$300,000 in the living trust account would be insured for a total of \$200,000 and \$100,000 would be uninsured.)

(4) In order for a depositor to qualify for the living trust account coverage provided under this paragraph (f), the title of the account must reflect that the funds in the account are held pursuant to a formal revocable trust. There is no requirement, however, that the deposit accounts records of the depository institution indicate the names of the beneficiaries of the living trust and their ownership interests in the trust.

(5) Effective April 1, 2004, this paragraph (f) shall apply to all living trust accounts, unless, upon a depository institution failure, a depositor who established a living trust account before April 1, 2004, chooses coverage under the previous living trust account rules. For any depository institution failures occurring between January 13, 2004 and April 1, 2004, the FDIC shall apply the living trust account rules in this revised paragraph (f) if doing so would

Federal Deposit Insurance Corporation

§ 330.12

benefit living trust account holders of such failed institutions.

[63 FR 25756, May 11, 1998, as amended at 64 FR 15657, Apr. 1, 1999; 69 FR 2829, Jan. 21, 2004; 71 FR 14631, Mar. 23, 2006]

§ 330.11 Accounts of a corporation, partnership or unincorporated association.

(a) *Corporate accounts.* (1) The deposit accounts of a corporation engaged in any “independent activity” (as defined in § 330.1(g)) shall be added together and insured up to the SMDIA in the aggregate. If a corporation has divisions or units which are not separately incorporated, the deposit accounts of those divisions or units shall be added to any other deposit accounts of the corporation. If a corporation maintains deposit accounts in a representative or fiduciary capacity, such accounts shall not be treated as the deposit accounts of the corporation but shall be treated as fiduciary accounts and insured in accordance with the provisions of § 330.7.

(2) Notwithstanding any other provision of this part, any trust or other business arrangement which has filed or is required to file a registration statement with the Securities and Exchange Commission pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8) or that would be required so to register but for the fact it is not created under the laws of the United States or a state or but for sections 2(b), 3(c)(1), or 6(a)(1) of that act shall be deemed to be a corporation for purposes of determining deposit insurance coverage. An exception to this paragraph (a)(2) shall exist for any trust or other business arrangement established by a state or that is a state agency or state public instrumentality as part of a qualified tuition savings program under section 529 of the Internal Revenue Code (26 U.S.C. 529). A deposit account of such a trust or business arrangement shall not be deemed to be the deposit of a corporation provided that: The funds in the account may be traced to one or more particular investors or participants; and the existence of the trust relationships is disclosed in accordance with the requirements of § 330.5. If these conditions are satisfied, each participant’s

funds shall be insured as a deposit account of the participant.

(b) *Partnership accounts.* The deposit accounts of a partnership engaged in any “independent activity” (as defined in § 330.1(g)) shall be added together and insured up to the SMDIA in the aggregate. Such insurance coverage shall be separate from any insurance provided for individually owned (single ownership) accounts maintained by the individual partners. A partnership shall be deemed to exist, for purposes of this paragraph, any time there is an association of two or more persons or entities formed to carry on, as co-owners, an unincorporated business for profit.

(c) *Unincorporated association accounts.* The deposit accounts of an unincorporated association engaged in any independent activity shall be added together and insured up to the SMDIA in the aggregate, separately from the accounts of the person(s) or entity(ies) comprising the unincorporated association. An unincorporated association shall be deemed to exist, for purposes of this paragraph, whenever there is an association of two or more persons formed for some religious, educational, charitable, social or other noncommercial purpose.

(d) *Non-qualifying entities.* The deposit accounts of an entity which is not engaged in an “independent activity” (as defined in § 330.1(g)) shall be deemed to be owned by the person or persons owning the corporation or comprising the partnership or unincorporated association, and, for deposit insurance purposes, the interest of each person in such a deposit account shall be added to any other deposit accounts individually owned by that person and insured up to the SMDIA in the aggregate.

[63 FR 25756, May 11, 1998, as amended at 70 FR 33692, June 9, 2005; 70 FR 62059, Oct. 28, 2005; 71 FR 14631, Mar. 23, 2006]

§ 330.12 Accounts held by a depository institution as the trustee of an irrevocable trust.

(a) *Separate insurance coverage.* “Trust funds” (as defined in § 330.1(p)) held by an insured depository institution in its capacity as trustee of an irrevocable trust, whether held in its trust department, held or deposited in any other department of the fiduciary